

REMARKS

The present application has been reviewed in light of the Office Action mailed on August 20, 2008. Claims 1, 2, 12, 16, 17, 27, 32, 40, 41, 44, 47, 49, 55, 61, 62 and 70-111 are pending in the application with Claims 1, 12, 16, 27, 47, 55, 62, 73, 75, 82, 86, 88, 97, 101 and 106 being in independent form. By the present Response, Claims 27, 40, 55, 61, 62, 70, 71, 73-96 and 101-111 have been withdrawn.

In the Office Action, even though Applicants have earnestly filed responses to nine Office Actions since at least September 2004 which included amendments and/or arguments to claims which are currently pending in order for the Applicants to advance the prosecution of the present application, an Election/Restriction is now requested of the Applicants. For full disclosure, the present Examiner took over the prosecution of the present application from another Examiner on or about September 2007. The Examiner has identified the following ten inventions:

- I. Claims 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72 and 97-100, drawn to creating payment accounts, receiving an indication to initiate payment, and effecting payment to a seller.
- II. Claims 27 and 106-111, drawn to maintaining payment accounts, receiving an indication to initiate payment, and loaning funds to the buyer to effect payment.
- III. Claims 55, 40 and 61, drawn to providing an incentive offer to a user for using a payment account.
- IV. Claims 62, 70 and 71, drawn to transacting the purchase of an auction item prior to receiving any bids on the item.
- V. Claims 73 and 74, drawn to effecting payment to an electronic commerce

merchant by transferring funds from a financial system to a payment account.

- VI. Claims 75-81, receiving authorization to effect payment at an electronic commerce website via a payment service independent of the electronic commerce website.
- VII. Claims 82-85, drawn to a database having payment accounts and a processor for allocating funds to payment accounts.
- VIII. Claims 86 and 87, drawn to an auction server executing auctions, and a payment server for identifying winning bidders and effecting payment for the winning bidder.
- IX. Claims 88-96, drawn to processing the conclusion of an auction sale, effecting payment, and enabling account management functions.
- X. Claims 101-105, drawn to displaying a payment page and receiving input from a buyer via selection of an icon for affecting payment.

The undersigned Applicant hereby affirms election, without traverse, the invention of Group I. The claims encompassing this Group are Claims 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72 and 97-100. Applicants reserve the right to prosecute the withdrawn or non-elected inventions by one or more continuation and/or divisional applications.

In the Office Action, Claims 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72 and 97-100 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 7,177,836 issued on February 13, 2007 to German et al. (“German et al.”) in view of U.S. Patent Application Publication No. 2002/0029339 published on March 7, 2002 to Rowe (“Rowe”), and further in view of U.S. Patent No. 7,343,339 issued on March 11, 2008 to Harrison, Jr. et al.

(“Harrison, Jr. et al.”).

According to the Office Action, both German et al. and Rowe “fail to teach providing the plurality of users [with] an option to enable an automatic payment service, wherein the automatic payment service automatically effects payment after occurrence of a termination event associated with the network transaction.”

The Examiner relies on Harrison, Jr. et al. to address the deficiencies of German et al. and Rowe. According to the Office Action, Harrison, Jr. et al. “teaches a system and method for enabling payments for Internet auctions, wherein the buyer and seller accounts are established, and payment is automatically wired to the seller immediately after the auction closes (column 19 lines 62-67). It would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to modify the teaching of German and Rowe to include this as an option because automation is a desirable feature in any electronic system, and the inclusion of this feature would allow payment to be automated so that the transaction can be completed as quickly as possible. While Harrison does not explicitly teach it as an option, it would be obvious to provide it as an option, and not mandatory because German teaches a user may desire to review the terms before completing a transaction, in case the user disagrees with some of the seller’s terms (column 23 lines 26-32).”

It is respectfully submitted that the recitations recited by Applicants’ claims and which the Examiner states are taught and/or made obvious by the disclosure of Harrison, Jr. et al. pre-date the disclosure of Harrison, Jr. et al. Accordingly, Harrison, Jr. et al. is an improper reference for rejecting Applicants’ Claims 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72 and 97-100.

In particular, Harrison, Jr. et al. issued on March 11, 2008 from a non-provisional application filed on May 3, 2001 which claims priority to a provisional application filed on May 3, 2000. A copy of the provisional application is available via PAIR. Applicants' reviewed the provisional application of Harrison, Jr. et al. and determined that the disclosure relied upon by the Examiner in addressing the deficiencies of German et al. and Rowe is not present in the provisional application. The disclosure relied upon by the Examiner in Harrison, Jr. et al. and found at column 19, lines 62-67 and column 23, lines 26-32 is only present in the non-provisional application filed on May 3, 2001, and not in the provisional application filed on May 3, 2000.

It is further respectfully submitted that at least the recitations added to Applicants' independent claims in the previous Amendment, the same recitations which the Examiner states are taught and/or made obvious by Harrison, Jr. et al., have support in Applicants' parent application filed on January 17, 2001 from which Applicants' present application claims priority to. That is, Applicants' the recitations recited by at least the non-withdrawn, independent Claims 1, 12, 16, 47 and 97 are fully supported by an earlier-filed application which has an effective filing date earlier than the effective filing date of the non-provisional application of Harrison, Jr. et al.

The Examiner is directed to Applicants' publication having U.S. Publication No. 2002/0095372 A1 ("the earlier application") and which corresponds to Applicants' application filed on January 17, 2001 from which the present application claims priority to. The Examiner is specifically directed to FIG. 4A, reference numeral 416, and paragraphs 0060 and 0065 of the earlier application which describes providing the plurality of users an option to enable an

automatic payment service, wherein the automatic payment service automatically effects payment after occurrence of a termination event associated with the network transactions as recited by Applicants' independent Claims 1, 12, 16, 27, 47, 62, 73, 75, 82, 88, 97, 101 and 106. Paragraphs 0060 and 0065 of the earlier application correspond word-for-word to paragraphs 0064 and 0072 of Applicants' publication having U.S. Publication No. 2002/0095379 A1 which corresponds to Applicants' present application.

Therefore, due to the following facts: (1) the provisional application of Harrison, Jr. et al. filed on May 3, 2000 does not disclose or suggest Applicants' subject matter which the Examiner relies upon Harrison, Jr. et al. in order to address the deficiencies of German et al. and Rowe, and (2) the recitations recited by Applicants' independent Claims 1, 12, 16, 47 and 97 which the Examiner relies on Harrison, Jr. et al. to obviate have support in Applicants' earlier filed application which has an effective filing date earlier than Harrison, Jr. et al., it follows that Harrison, Jr. et al. is an improper reference for rejecting Applicants' independent Claims 1, 12, 16, 47 and 97 and their respective dependent claims. Accordingly, withdrawal of the rejection under 35 U.S.C. Section 103(a) with respect to independent Claims 1, 12, 16, 47 and 97, and their respective dependent claims, and the allowance thereof are respectfully requested.

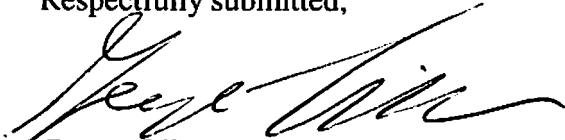
In view of the foregoing remarks, arguments directed to the patentability of Applicants' claims over the teachings of Harrison, Jr. et al. are not necessary, including arguments against the Examiner's finding of obviousness as set forth in the Office Action.

It is respectfully submitted that all withdrawn independent claims, except perhaps independent Claims 55 and 86, are in condition for allowance since they recite substantially the same recitations as independent Claims 1, 12, 16, 47 and 97; that is, the recitations added to

independent Claims 1, 12, 16, 27, 47, 62, 73, 75, 82, 88, 97, 101 and 106 in the previous Amendment. The Examiner relied upon Harrison, Jr. et al. to reject these recitations under 35 U.S.C. Section 103(a). As discussed above, Harrison, Jr. et al. is an improper reference. Accordingly, it is respectfully submitted that the withdrawn independent Claims 27, 62, 73, 75, 82, 88, 101 and 106 and their respective dependent claims should be un-withdrawn and allowed along with independent Claims 1, 12, 16, 47 and 97 and their respective dependent claims.

It is respectfully submitted that all claims presently pending and not withdrawn, as well as withdrawn independent Claims 27, 62, 73, 75, 82, 88, 101 and 106 and their respective dependent claims, are patentable over the art of record and allowance thereof is earnestly solicited.

Respectfully submitted,



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